



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?
3. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This month-to-month tenancy started on July 1, 2005. Rent is \$2,000.00 per month payable in advance on the 1st day of each month plus utilities. The Tenant paid a security deposit of \$1,000.00 on June 1, 2005. A further term of the written tenancy agreement as set out in the Addendum is that the "Tenant will perform one hour per day labour for repairs and maintenance of the property" and "the Landlord will provide parts and materials for repairs if the Landlord deems it necessary to do so."

On July 28, 2010 the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 28, 2010 by leaving a copy of it in the Tenant's mail box. The Parties agree that the Tenant did not pay the following amounts of rent:

- \$400.00 for July 2009;
- \$2,000.00 for each of August, September and October 2009;
- \$400.00 for November 2009;
- \$200.00 for January 2010;
- \$2,000.00 for each of February and March 2010;
- \$1,300.00 for each of April and May 2010; and
- \$2,000.00 for June, July, August, September, October and November 2010 (for a total of \$25,600.00)

The Tenant said he did not pay \$6,800.00 of this amount because the Landlord owed him this amount for work he did on a dock. In particular, the Tenant said he had a separate agreement with the Landlord to replace a dock on the rental property for

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approximately \$28,000.00. The Tenant also claimed that he set off \$3,200.00 from his rent for major or emergency repairs that he made while the Landlord was out of the country and set off a further amount of \$1,500.00 to repair 2 water leaks (which the Landlord denied). The Tenant admitted that he did not have a written or a verbal agreement with the Landlord to deduct these amounts from his rent.

The Parties also agree that the Tenant did not pay the following amounts for the District of West Vancouver utilities:

- \$747.82 for 2008
- \$1,559.12 for January 1 – June 30, 2009;
- \$1,498.49 for July 1 – September 31, 2009
- \$606.93 for October 1, 2009 to June 30, 2010 (for a total of \$4,412.36).

The Tenant claimed that he did not pay these amounts because there were two leaks in the water lines which resulted in excessive billings. Consequently, the Tenant argued that he should only be responsible for an amount equal to an average of the amount billed for the previous 4 years plus an increased amount but he did not know what that amount would be. The Landlord claimed that the municipality credited the amount of \$1,498.49 on an amended statement dated February 19, 2010 for the 1st water leak and that this was applied to the amount sought from the Tenant. The Landlord admitted that he had not yet applied for or been granted a credit regarding the 2nd water leak because he had not yet received a billing for the period July 1 – October 31, 2010.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time. Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was put in his mail box or on July 31, 2010. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than August 5, 2010.

I find that there was no term of the Parties tenancy agreement (or any other agreement) that the Tenant would be entitled to deduct amounts for his labour from the rent. Consequently, I find that the Tenant has rent arrears of \$23,600.00 to October 31, 2010. I also find that the Tenant has not paid rent for November 2010. Furthermore, I find that the amount of utilities owed to June 30, 2010 has been adjusted as the Landlord

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claimed to reflect irregular water readings caused by the 1st water leak and that the Tenant will likely obtain the benefit of any further adjustments for the 2nd water leak when the Landlord receives the billing for the period July 1 – October 31, 2010 and bills him for it. Consequently, I find that the Tenant has utility arrears of \$4,412.36 to June 30, 2010.

Consequently, I find that the 10 Day Notice dated July 28, 2010 is an enforceable Notice and I also find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I further find that the Landlord is entitled to recover rent arrears to October 31, 2010 in the amount of \$23,600.00 and unpaid utilities in the amount of \$4,412.35 to June 30, 2010 as well as the \$100.00 filing fee for this proceeding. However, as the monetary jurisdiction of the Director is limited to \$25,000.00, I find that the Landlord is entitled to a monetary claim for \$25,000.00 and I award him that amount.

I Order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenant's security deposit plus accrued interest in partial payment of the monetary award. The Landlord will receive a monetary order for the balance owing as follows:

Monetary Award:	\$25,000.00
Less: Security Deposit:	(\$1,000.00)
Accrued Interest:	<u>(\$35.42)</u>
Balance Owing:	\$23,964.58

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$23,964.58** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 02, 2010.

Dispute Resolution Officer